Supreme Court, U.S.
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No. 09-1542

In The Supreme Court of The United States

ZINNIA I. CHEN, CHARLIE H. DAVIS,
LEYDA E. CHEW, MICHAEL TAYLOR,
AND MARY C. FOX,
Petitioners,

v.

HON. KENNETH R. LESTER, JR., *ET AL.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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PARTIES TO THE PROCEEDINGS

(Rule 14.1(b))

Petitioners Zinnia I. Chen, Charlie H. Davis, Leyda E. Chew, Michael Taylor and Mary C. Fox have no parent corporation and no publicly held company that owns 10% or more of its stock Rule 29.6. Accordingly, the parties to the proceedings are:

Lower State Court Magistrate Judges/Respondents

Hon. Galluzzo D. John

Hon. Lester Jr. Kenneth R.

Hon. Sprinkle IV, George A.

Lower District Court Trial Judges

Hon. Baker David A.

Hon. Kelly Gregory J.

Hon. Spaulding Karla R.

Lower District Court Chief Judge

Hon. Conway Anne C. / Complained Of Judge

PARTIES TO THE PROCEEDINGS – Continued

Attorneys

Grant Jeffrey K.

Gorenflo Clifton H. / Respondent

Gorenflo Rachel A. / Respondent

Harrop L. Ronald

Lerner Robert N. / Respondent

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McMahon James Scott

Sewell E. Susan

Siebens Gerald D.

Parties And Affiliates

Amin Mrinalini / Respondent

Bolar Elaina / Respondent

Chen Zinnia I./Petitioner / InsideOut Charitable's Inc.

Chew Leyda E. / Petitioner

Clem Thomas / Respondent

Davis Charlie H. / Petitioner

Deleon Victor Gregory / Respondent

Dew Claire Oscar F. / Respondent

Eslinger Donald F. / Respondent

PARTIES TO THE PROCEEDINGS – Continued

Fox Mary C. / Petitioner

Gardner Lydia / Respondent

Gosh Bill / Respondent

Hess Barbara / Respondent

Morse Maryanne / Respondent

Nelson Mike / Respondent

Ochs Holly / Respondent

Phipps Laura / Respondent

Spaziano Lee M. / Respondent

Smith Chuck / Respondent

Taylor Michael / Petitioner

Tricomi Katie / Respondent

The U.S. Department Of Justice / Civil Division

Eric H. Holder Jr.

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(Rule 14.1(c))

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REPLY BRIEF FOR PETITIONERS

COMES NOW, the petitioners pro'se Zinnia I. Chen, Charlie H. Davis, Leyda E. Chew, Michael Taylor, and Mary C. Fox pursuant to Supreme Court Rule 15:6 provision disclosing that any petitioner may file a reply brief addressed to the new points raised in the brief in opposition namely, the one and only reply brief in opposition filed July 21 2010 in the instant case by the undersigned counsel of record for principal / respondent Chuck Smith, *hereinafter* Smith.

That, pursuant to Supreme Court Rule 12.3 a "waiver" was indeed filed by respondents Donald F. Eslinger, Mrinalini Amin, Thomas Clem, Barbara Hess, Holly Ochs, Mike Nelson. Bill Gosh, Kati Tricomi, Laura Phipps, Lydia Gardner, Clair Oscar Dew, Maryanne Morse, Hon. Kenneth R. Lester Jr. and Hon. John D. Galluzzo. However, a "waiver" was not filed by the remaining seven-respondents specifically respondents Victor Gregory Deleon, Clifton H. Gorenflo, Rachel A. Gorenflo, Robert N. Lerner, Lee M. Spaziano, Hon. George A. Sprinkle IV, and Elaina Bolar.

Petitioners hereby reply to Smith's brief in opposition disclosing that pursuant to Rule 3 Federal Rule of Civil Procedure on November 18, 2008 petitioners properly commenced this civil action by the filing of the subject complaint initially filed in District Court below (Doc. 1). However, contrary to the false suppositions of an "amended complaint" filed by petitioners as wholly alleged by Smith sparingly through out his brief in opposition filed at this late date. Petitioners received not even a minimal Rule 15(a) Federal Rule of Civil Procedure amendment subsequent to the filing of their initial complaint in the district court below on November 18, 2008 (Doc. 1).

At the time of December 8, 2008 respondents not limited to Smith still had not answered the subject complaint initially filed by petitioners nor had they served a responsive pleading (*see* Doc. 4, Page 3, ¶7). Much less, the judicial processing division of the lower Orange and Seminole County Sherriff Department had not effected service of summons with complaint on respondents in the manner as required by Federal Rule of Civil Procedure 4(1)(m).

Under duress at the time of December 8, 2008, petitioners supplemented their forgoing complaint initially filed on November 18, 2008 by the incorporation of a chronology of other ongoing constitutional and due process violations which occurred concurrently in the state court below. Among other things, are the contusioned wrist suffered by petitioner Taylor during his utterances to the court of said complaint as well as the false arrest and pay-roll garnishment which Taylor and Fox endured at the time of their court-ordered appearance in front of respondent / Hon. George A. Sprinkle IV whom presided over the complained of underlying manufactured real estate fraud state court proceedings incorporating petitioners Taylor and Fox as well as defendants / respondents Robert N. Lerner and Lee M. Spaziano (more specifically, companion case# 2006CA-008209-0 interposed herewith and initially filed In The Circuit Court Of The Ninth Judicial Circuit, In And For Orange County, Florida)……

As it is apparent, in reply Smith then commence a campaign to ridicule and undermine petitioners prayer for relief or at minimal the granting of a "petition for writ of certiorari" by this Honorable Court.

In doing so, noticeably Smith completely omitted the evidentiary video-taped DVD"s (Doc. 89, 119 & 126) incorporating the documented conspiracy not limited to the repeated deprivation of petitioners rights committed concomitantly by said respondents of the Seminole County Justice Department of the state of Florida whom at the time of September 3, 2008 compelled Chen to appear in multiple bogus manufactured state court proceedings prepared below.

Although this was not disclosed by Smith in reply, in the alternative Smith offers nothing more than a culmination of preposterous lies, dubious assertions with wicked intent, disingenuous half-truths and worse than that that which he disingenuously incorporated in his "statement of the case" and proposition as "the facts" on Pages 1-7 in order to deceive this Honorable Court to believe that petitioners / "plaintiffs seem to allege that Smith violated state court orders by removing Chen's children from school without her consent and transporting them to Seminole County authorities." Contrary to Smith's assertions, the forgoing companion case and civil matter incorporating Chen's minor children had already been disposed of by the Honorable Nancy F. Alley of the "Circuit Court,.....

Eighteenth Judicial Circuit, In And For Seminole County Florida (case #, 02-DR-4662-02DL), on August 25, 2008 respondent Smith and Deleon repeatedly violated the existing order of the court (Doc. 4, Page 8, ¶¶ 33-34) which furthermore was received repeatedly by Smith in via-certified correspondences which Smith at all times acknowledged receiving and purportedly retained in the records at "Faith Christian Academy" school (Doc. 4, Page 9-12). At the time the subject order was repeatedly violated by respondents / Smith and Deleon there was no existing order requiring Smith to permit Deleon to violate the order and transport Chen's minor children out of the jurisdiction of Orange County into the jurisdiction of Seminole County authorities. Equally gross, taken out of the context by Smith are the facts of exactly what really transpired during petitioners course of action in the courts below compounded by "Smith's personal *de novo* purview of complained of lower district court Chief Judge Anne C. Conway's erroneous order entered March 19, 2009 (Doc. 151). In short order, this appears on "page 2", "¶3" of Smith's "statement of the case and of the facts" offered to this court.

Indisputably, how right petitioners named herein were to report complained of Judge Anne C. Conway relative to the provisions of Title 18 U.S.C. 241 and 242 and 18 U.S.C. 4.

Unequivocally, Smith deceptively ramble on to precluded the lower district court's premeditated beginning in the end compounded by Smiths' specific quotations from Judge Anne C. Conway's erroneous order precluding that "the facts in this litigation are somewhat difficult to decipher given the nature of the content of the various documents that Ms. Chen filed below" when in fact the subject interposed complaint filed herein at all times incorporated petitioners Chen, Davis, Chew, Taylor and Fox howled protest documented more than 10-times relative to "the repeated due process and constitutional violations" committed by respondents of the state of Florida in said state courts below (Doc. 4, ¶¶ 4, 10, 11, 12, 13, 14, 16, 17, 18, 20, 22, & 23) enough in this avenue...

Federal Law

In the district court below, as mandated by Federal Rule of Civil Procedure 8(1)(2)&(3). When pleading, plaintiffs / petitioners accordingly filed a complaint with "short and plain statements of the grounds upon which the Court's Jurisdiction depended". And equally regarded further mandates there under stating that "unless the court already has jurisdiction and the claims needs no new grounds of jurisdiction to support it", or offer "a short and plain statement of the claim showing that the pleader is entitled to relief" and a demand for judgment for the relief the pleader seeks. Furthermore, "relief in the alternative or of several different types may be demanded". Accordingly, the composition of the interposed complaint filed by the plaintiffs named herein regarded the same prior to it's filing in the district court below. Here petitioners, note that there was no explicable reason for the dismissal of plaintiffs complaint (Doc. 4) other than the continued constitutional violations equally suffered by plaintiffs below..

In the alternative, all by itself, Rule 72 Federal Rule of Civil Procedure provisions provided the appropriate mandated standard for review by a district court as opposed to the statements conclusively uttered by Smith and complained of Judge Anne C. Conway stating " in light of plaintiffs persistent history of filing baseless and largely incomprehensible pleadings which have impacted the resources of this court, as well as of defendants, the clerk is directed not to except for filing any future pleading submitted by plaintiffs in this case, except for a notice of appeal". Moreover, in addition to circumvention of Rule 72 Federal Rule of Civil Procedure, petitioners appearing herein were essentially denied the opportunity to frame even a minimal response to the subject ambiguous order entered *sau sponte* by complained of lower district court Chief Judge Anne C. Conway's on March 19, 2009 (Doc. 151). As it appears, in *U.S. v. Goodwin*, 102 S. Ct, 2485, 457 U.S. 368, 73 L.E.d2d 74, on remand 687 F.2d 44 (1982). An individual may not be punished for exercising a protected statutory constitutional right including Title 28 of the Civil Rights Act of 1964, 42 U.S.C. 1983 and 28 U.S.C. § 1343(a)(1)(2)(3) and 1331 and their counter parts there under.

At best, in addition to the lower district court permitting petitioners to do no amendment to the subject complaint filed by petitioners in the district court below, conclusively petitioners were ordered not to file an objection to the district court's order filed below specifically "Doc. 151".

PETITIONERS REPLY TO SMITH'S ARGUMENT INCORPORATED IN SMITH'S BRIEF IN OPPOSITION FILED JULY 21, 2010 IN THIS SUPREME COURT OF THE UNITED STATES

Smith is utterly mistaken as to the sum-total of petitioners reasoning for a "Petition For Writ Of Certiorari". This is not at all wholly "an effort by Ms. Chen to have this court review the affirmance issued by the Eleventh Circuit of the order of the District Court which had the effect of dismissing Ms. Chen's" purported "amended complaint with prejudice"... In the alternative, as it was with petitioners incorporation of "InsideOut Charitable's" and petitioners November 2, 2009 out-cry urging the civil division of "U.S. Department Of Justice" to look into this matter similarly this equally an effort to report the continued

constitutional and due process violations concomitantly committed in the underlying court's below. Substantively, said violations are routinely repeatedly committed in retaliation simply because a complaint was raised by a pro se petitioner against a respondent of the state of Florida. Smith please note, had the pro se petitioners named herein believed that if it was at all fruitful to elect the services of Smith and his undersigned counsel to substantiate that "there is no basis contained within the Petition that would support the issuance of a Writ as Ms. Chen requested" we would have indeed done so and not elected the proper venue and forum of the lower district court as well as the Federal Rules Of Civil Procedure to do so... Understandably, a "writ of certiorari" currently means an order by a higher court directing a lower court, tribunal, or public authority to send the record including the sealed evidence in the instant case for review. That said, subsequent to petitioners filing the subject complaint in the district court below, there was nothing normal in contrast to the abnormal unruly course which petitioners complaint traveled since inception of the filing of the subject complaint.

In tantamount and error proffered, Rule 12 Federal Rule of Civil Procedure provisions provides that a "defense or objection" by respondents be timely filed within 20-days after being served with summons and complaint. In the instant case, the respondents touted to be covered-up by Smith and the lower district court was actually employed within the same building as the judicial process division moreover as it appears service of summons was than delayed and aborted weeks and weeks as the district court below repeatedly circumvented its own forgoing orders of the court (specifically Doc. 3) as magistrates / respondents whom presided over the subject interposed manufactured state court cases below continued to affect false judgments and manufacture garnishments therein against plaintiffs.

Accordingly, at the time of December 23, 2008 pro'se petitioners herein subsequently repeatedly filed their "Petition For Writ Of Mandamus" to the lower "U.S. District Court, Middle District Of Florida, Orlando Division" disclosing the same (Doc. 16 & 33). Although, Smith argumentatively in his "statement of the case and of the facts" state that "given the nature of the other filings with which Ms. Chen had clogged

the District Court, the District Court properly ordered that the dismissal would be with prejudice" when in fact petitioners herein were compelled to file pleadings motions and correspondences as a paper-trail to account for the unorthodox course their complaint took subsequent filing the complaint in the District Court below.

More bizarre, it was not until petitioners mandamus filing of "Doc.16" that petitioners received the "returns" for service of summons for "Doc.'s 17 – 32" as well as petitioners mandamus filing of "Doc. 33" which yielded the "return" for service of summons for "Doc's. 55, 58 & 59". Unequivocally, at the time petitioners supplemented their complaint on December 8, 2008 incorporating the contusioned wrist which Taylor suffered respondent / Hon. George A. Sprinkle IV appearing before petitioner's Taylor and Fox during the manufactured hearing still had not been served the summons and complaint and was permitted to elude into retirement by the "Orange County Judicial Process Division" employed within the same building (*see*, Doc.'s 35 & 36).

In reckless disregard to Rule 12 Federal Rule of Civil Procedure and the complaint timely filed by petitioners, respondents of the state of Florida concurrently effected false judgments against petitioners in the state courts below. During this continued construction of divisive mechanisms to deprive petitioners of their children, effect false arrest, real-estate fraud claims and the continued deprivation of constitutional rights all while petitioners cried-out under the umbrella and jurisdiction of the district court below and received no answer, by far the respondents of the state of Florida herein were liberally granted phony "enlargements of time" beyond the mandated 20-day period permitted to file their purported reply briefs (Doc's. 39, 47, 51, & 52) which Smith conclusively has now taken extremely out of context.

For the purpose of rule 15(A), Federal Rules of Civil Procedure a motion to dismiss is not a responsive pleading or answer. *See* also, *Walgreen v. Howes*, 482 F. 2d 95, 96-97 n. 1 (1 st Cir. 1973); 6 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1483 (1990) at 585. Equally, a private party involved in such a conspiracy, even though not an official of the state, can be liable under § 1983. Private persons, jointly engaged with state officials in the prohibited action (as is Doc. 4, Pages 9-12) , are acting "under color" of law for the purpose of the statute. Substantively, to act "under color" of law does not require that the accused be an officer of the state. It is enough that he is a willful participate in joint activity with the state or its agents. See also, *United States v. Price*, 383 U.S. 787, 794 [86 S Ct. 1152, 1156, 16 L.Ed. 2d 267] (1966), 398 U.S., at 152, 90 S.Ct., at 1605.

REASON FOR GRANTING THE WRIT

In the instant case, the foregoing orders received from the lower U.S. District Court, Middle District of Florida as well as the underlying Eleventh Circuit, Court of Appeals was not only erroneous they were hideously erroneous and in tantamount are a cover-up in proportion to a preconceived miscarriage of justice. Equally, aside from the underlying forgoing due process and constitutional violation claims filled by plaintiffs Charlie H. Davis, Leyda E. Chew, Michael Taylor, Mary C. Fox and incorporated in the underlying interposed complaint "Doc. 4". On the evening of September 3, 2008 said respondents of the Seminole County Sheriff Department of the state of Florida named herein appeared at the resident belonging to petitioner Chen were no crime had been committed. This appearance was collectively made by said respondents of the state of Florida on their own initiative.

At the time the violation occurred, the visited appeared to be official if you happened to be an on looker standing afar looking on. However, that very hour Chen's minor children were repeatedly unlawfully removed from Chen's custody in circumvention of an existing order of the court as a personal favor for Chen's former husband respondent / Victor Gregory Deleon. During the course of this action petitioners believe that justice would ultimately prevail, but in the alternative petitioners herein received an even worst deprivation of their constitutional rights and rights to due process subsequent to appearing with evidence in hand necessary to bring about a conviction in the court's below.

CONCLUSION

The Eleventh Circuit Court Of Appeals and District Court judgment below should be reversed, with the directive to affirm in favor of pro'se petitioners in lieu of the constitutional provisions mandated above.

Respectfully Submitted,
Zinnia I Chen,
Charlie H. Davis,
Leyda E. Chew,
Michael Taylor, &
Mary C. Fox